IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7624 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K L PATEL

Versus

GUJ.WATER RESOURCES DEVP. DEPT

Appearance:

MR PC MASTER for MR HB SHAH for Petitioners

MR PARESH UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/12/2000

ORAL JUDGEMENT

The petitioners who were working as Deputy Executive Engineers with the respondent Corporation seek a direction on the Corporation to delete the names of Shri K.R. Bhalgama and Shri A.P. Sheth from the final seniority list of Executive Engineers and for being

granted consequential reliefs on the basis of the revised seniority list.

2. According to the petitioners, by Circular dated 19.11.1990 the Corporation published a provisional seniority list of Deputy Executive Engineers showing their position as on 20.1.1990, in which the names of the petitioners were at Serial Nos. 7 and 12 respectively. According to the petitioners, eventhough Shri A.P. Sheth had resigned as a junior engineer and his resignation was accepted by the Corporation with effect from 15.2.1984, his name was shown at serial No.4 of the said provisional list.

The Corporation framed Classification, Recruitment and Promotion Rules in 1990, which were made effective from 17.8.1990. According to the petitioners, the promotions of 18 Deputy Executive Engineers (Mechanical), which were given prior to 17.8.1990 were governed by the Notification of 1977, as per which the junior engineers, supervisors and overseers were to be promoted to the post of Deputy Executive Engineers (Mechanical) in the ratio of 7:4:1 respectively. In a fresh provisional seniority list of Deputy Executive Engineers published by the Corporation showing the position of Deputy Executive Engineers as on 27.4.1992, instead of deleting the name of Shri A.P. Sheth from the seniority list, name of Shri K.R. Bhalgama which was not in the provisional seniority list on 20.1.1990 came to be included. Shri Bhalgama who was working with the Corporation earlier on deputation came to be repatriated to his parent Department in 1989. Therefore, his name also could not have been included in the provisional seniority list. The case of the petitioners is that if the names of these two persons were not included in the provisional list and the promotion ratio was maintained, they would have been shown at Serial Nos. 6 and 7 to the provisional list. The petitioners represented on 25.5.1992 and 26.5.1992 against the provisional list, praying for deletion of these two names. However, in the meanwhile, the respondent Corporation by its order dated 27.4.1992, promoted Shri D.M.Chauhan, Shri J.G. Patel and Shri P.B. Brahmbhatt to the higher post of Executive Engineer on the basis of the provisional list without deciding their representation. According to the petitioners, these three persons would be junior to the petitioners, if their representations were considered and the names of these persons were deleted from the seniority list.

3. It has been contended on behalf of the

petitioners that the action of the Corporation in showing the names of Shri K.R. Bhalgama and Shri A.P. Sheth in the final seniority list annexure "A-I" is arbitrary and discriminatory because, Shri Bhalgama had been repatriated and Shri Sheth had resigned, leaving no scope for their inclusion in the final seniority list. It is also contended that the action of the Corporation in including their names in the seniority list was a deliberate design on the part of the Corporation to cause serious prejudice to the rights of the petitioners, whose names would have been otherwise appeared at serial Nos. 6 and 7 of seniority list annexure "I".

4. It appears from the record that both the petitioners joined the Corporation as Assistant Engineers from 18.7.1978. They came to be promoted as Deputy Engineers on 25.1.1985. In the meantime, various persons from those who came to be transferred enblock from Government/Panchayats and from those who were directly recruited in the Corporation as Assistant Engineers and Additional Engineers, were promoted as Deputy Executive Engineers in accordance with their seniority. Even according to the petitioners, as stated in paragraph 7 of the petition, as per the Notification of 1977 which was applicable for the promotion of Deputy Executive Engineers (Mechanical), junior engineers, supervisors and overseers were to be promoted to the post of Deputy Executive Engineers (Mechanical) in the ratio of 7:4:1 respectively. The Corporation, by an affidavit-in-reply filed by it's Company Secretary V.R.Lalaji, has stated that initially vide Circular dated 19.11.1990, provisional seniority list of the Deputy Executive Engineers was prepared on the basis of the date of promotions of various persons as Deputy Executive Engineers as well as on the basis of the ratio of 7:4:1. It is stated that before finalising the list, representations of various persons were considered by the Corporation. As regards Shri A.P.Sheth, it has been stated in paragraph 5 of the reply that at the relevant point of time his name was also mentioned in the seniority list because he was promoted as Deputy Executive Engineer by order dated 11.1.1984. However, after the said order he had proceeded on leave and did not resume his duties. It is stated that with a view to show that the prescribed ratio of 7:4:1 was maintained, the name of Shri Sheth was shown in the provisional seniority list of 1990. It is then stated that the seniority of all persons was refixed in accordance with their dates of promotion on the cadre of Deputy Executive Engineers and while preparing the subsequent provisional seniority list, the name of Shri Bhalgama was mentioned,

which through over-sight was not mentioned in the earlier provisional seniority list published in 1990. It is stated that Shri Bhalgama was transferred to the Corporation on 16.6.1978 and came to be promoted in May, 1979 as Deputy Executive Engineer. Thereafter, in view of the options offered by the Government vide Resolution dated 14.10.1981, Shri Bhalgama came to be repatriated to the Government after the option was decided by the Government under its resolution dated 18.1.1990. It is made clear in paragraph 6 of the affidavit-in-reply that though Shri Bhalgama was repatriated to the Government, it was with a view to show the actual position regarding the ratio of 7:4 that his name was mentioned in the seniority list. It is further stated that on the basis of the seniority list, three qualified, eligible and suitable candidates, namely - Shri J.G.Patel, Shri P.B. Brahmbhatt and Shri D.M.Chauhan were promoted as Executive Engineers in accordance with their seniority. At the relevant point of time, there were three vacancies in the cadre of Executive Engineer (Mechanical) and the persons who were found to be suitable and came to be selected were promoted. Shri D.M Chauhan was a Scheduled Caste candidate and was promoted to fill-up the reserved quota. It is stated that the claim of the petitioners that they would have been better off if the names of these two persons were deleted from the seniority list was based on mere conjectures and surmises.

5. From the facts which have been placed on record, it is clear that there were three different sources for promotion to the higher post of Deputy Executive Engineer (Mechanical). It was with a view to reflect the ratio of 7:4:1, which was required to be observed, that the names of Shri Bhalgama and Shri Sheth were shown in the seniority list. As clarified in the affidavit-in-reply, the seniority list reflected not only the inter-se seniority position, but also the source from which the promotions were given. Shri A.P.Sheth was promoted as Deputy Executive Engineer by order dated 11.1.1984, while Shri Bhalgama who was on deputation had been promoted in May, 1979. In view of the fact that Mr. A.P. Sheth was promoted as Deputy Executive Engineer on 11.1.1984, his name continued to be shown in the seniority list with a remark that he had resigned to indicate that the necessary ratio 7:4:1 was duly maintained. Similarly, Shri Bhalgama's name was continued to be shown even after his repatriation on 19.1.1990, with a view to indicate that the said ratio was duly maintained. The continuation of the name of these two persons in the seniority list in no way affected the rights of these petitioners. Their promotions in the cadre of Deputy

Executive Engineers were under the relevant rules which required necessary ratio to be maintained for promotion from three different sources from which promotions were to be given. The petitioners cannot claim any benefit on the ground that these two persons were wrongly retained in the seniority list because on the admitted fact that they were not in the cadre but their names were merely shown only with a view to indicate that the ratio of 7:4:1 was duly maintained at the time when they were promoted as Deputy Executive Engineers from the subordinate cadres constituting three different sources for promotion, it cannot be said that any right of the petitioners was adversely affected. There was no question of any enhanced benefit or advantage being available to the petitioners by deletion of their names because admittedly one had resigned and the other had repatriated and they did not in any manner affect the petitioners prospects. The petitioners do not even claim any better right over them in the final list and their names are shown only for indicating the historical aspect of the maintenance of the ratio of 7:4:1, which was to be observed for effecting promotions to the cadre of Deputy Executive Engineers. The petitioners also cannot have any grievance over the promotions of Mr. J.G. Patel, Mr. P.B. Brahmbhatt and Mr. D.M. Chauhan, who were promoted as they were found to be duly qualified, eligible and suitable and were selected for such promotion as stated in paragraph 6 of the affidavit-in-reply. It may be noted that these affected parties are not even impleaded in the present petition.

6. In the above view of the matter, there is absolutely no merit. The petition is therefore rejected. Rule is discharged with no order as to costs.

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